

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGEL CONCEPCION,	:	16-CV-5918 (LAP)
	:	
Petitioner,	:	
	:	
	:	<u>ORDER ADOPTING REPORT</u>
	:	<u>AND RECOMMENDATION</u>
v.	:	
	:	
D. MARTUSCELLO,	:	
	:	
Respondent.	:	
-----X	:	

Loretta A. Preska, Senior United States District Judge:

Petitioner Angel Concepcion, proceeding pro se, filed a petition to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2254 on or about July 22, 2016. (Pet., July 22, 2016, ECF No. 1). Before the Court is the Report and Recommendation ("R&R") of United States Magistrate Judge Gabriel Gorenstein, issued on October 11, 2017. (R&R, Oct. 11, 2017, ECF No. 18). Copies of the R&R were mailed to Petitioner. (R&R at 24).

The R&R advised Petitioner that specific written objections were due within fourteen days after being served with the R&R. (R&R at 23). No objections to the R&R have been filed to date and the time to do so has expired.

For the purposes of this order, the Court assumes familiarity with the underlying facts and analysis as set

forth in Magistrate Judge Gorenstein's R&R. With regard to an R&R that is not objected to, or the unobjected-to portion of an R&R, a district court reviews the R&R for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009). Because Petitioner has not submitted objections to the R&R, the Court applies the clear error standard.

The Court has carefully reviewed the thorough and well-reasoned R&R and finds that there is no clear error of law. Accordingly, the Court adopts the R&R in its entirety.

Conclusion

Defendant's motion to dismiss the petition is granted.¹ The petition for a writ of habeas corpus is denied, and the Clerk of the Court is directed to close the case.


Because Petitioner has not made a substantial showing of the denial of a federal right, the Court declines to issue a certificate of appealability. 28 U.S.C. § 2253. Furthermore, Petitioner has waived his right to appeal because he has not filed any objections to the R&R. (R&R at 23-24).

¹ Counsel for Respondent D. Martuscello did not file a Notice of Motion to Dismiss the Petition for a Writ of Habeas Corpus. Accordingly, there is no motion to terminate on the docket.

The Clerk's Office is directed to mail a copy of this Order to Petitioner at his last known address: Angel Concepcion, DIN 12-A-1883, Eastern New York Correctional Facility, PO Box 338, Napanoch, New York 12458-0338, and note service on the docket.

SO ORDERED.

Dated: New York, New York
September 7, 2018


LORETTA A. PRESKA
Senior United States District Judge